

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK TIMES COMPANY and	:	
MARK MAZZETTI,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 22-cv-01539
UNITED STATES DEPARTMENT OF JUSTICE,	:	
	:	
Defendant.	:	
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DECLARATION OF MARK MAZZETTI

I, Mark Mazzetti, under penalty of perjury, declare as follows:

1. I am a reporter with *The New York Times* (“*The Times*”) and a Plaintiff in the above-named action. I make this Declaration from my own personal knowledge in support of Plaintiffs’ Cross-Motion for Summary Judgment and in opposition to Defendant’s Motion for Summary Judgment.

2. At *The Times*, where I have been since 2006, I cover intelligence, foreign affairs, and other broad national security issues. I began investigating NSO Group (“NSO”), an Israeli company that makes and sells spyware, in 2019, though *The Times*’s reporting on the company dates back to at least 2016.¹

***The Times*’s Reporting on NSO**

3. *The Times*’s coverage of NSO has highlighted the company’s development of tools with the unprecedented ability to “collect vast amounts of previously inaccessible data from

¹ “How Spy Tech Firms Let Governments See Everything on a Smartphone,” *The New York Times*, Sep. 2, 2016, <https://www.nytimes.com/2016/09/03/technology/nso-group-how-spy-tech-firms-let-governments-see-everything-on-a-smartphone.html>.

smartphones in the air without leaving a trace—including phone calls, texts, emails, contacts, location and any data transmitted over apps like Facebook, WhatsApp and Skype.”² One such tool is called Pegasus.

4. NSO’s customers have included the governments of Saudi Arabia, the United Arab Emirates, and Mexico. *The Times* has reported that governments have used NSO spyware to infiltrate and monitor the digital activity of dissidents, political opponents, journalists, and human rights workers.³ Saudi Arabia in particular has used the NSO tool Pegasus “to crush dissent inside the kingdom and to hunt down Saudi dissidents abroad.”⁴

5. In November 2021, *The Times* reported, the U.S. Department of Commerce placed NSO Group on a “blacklist” due to “the surveillance software . . . being abused by authoritarian nations.”⁵ The Department stated in a press release that it added NSO to the Entity List for Malicious Cyber Activities, which blocks American suppliers from doing business with companies on the list, based on evidence that NSO “developed and supplied spyware to foreign governments that used these tools to maliciously target government officials, journalists, businesspeople, activists, academics, and embassy workers.”⁶

² See “A New Age of Warfare: How Internet Mercenaries Do Battle for Authoritarian Governments,” *The New York Times*, March 21, 2019, <https://www.nytimes.com/2019/03/21/us/politics/government-hackers-nso-darkmatter.html>.

³ *Id.*

⁴ “Israeli Companies Aided Saudi Spying Despite Khashoggi Killing,” *The New York Times*, July 17, 2021, <https://www.nytimes.com/2021/07/17/world/middleeast/israel-saudi-khashoggi-hacking-nso.html>.

⁵ “U.S. Blacklists Israeli Firm NSO Group Over Spyware,” *The New York Times*, Nov. 3, 2021, <https://www.nytimes.com/2021/11/03/business/nso-group-spyware-blacklist.html>.

⁶ “Commerce Adds NSO Group and Other Foreign Companies to Entity List for Malicious Cyber Activities,” *U.S. Dep’t of Commerce*, Nov. 3, 2021, <https://www.commerce.gov/news/press-releases/2021/11/commerce-adds-nso-group-and-other-foreign-companies-entity-list>.

6. In December 2021, *The Times* reported the first known case of the Pegasus spyware's use against American officials.⁷ The phones of 11 U.S. Embassy workers in Uganda were hacked. It is not clear who used Pegasus to carry out the attack.

7. In a story published on January 28, 2022, by *The New York Times Magazine*, my colleague Ronen Bergman and I reported on how the FBI had obtained its own copy of NSO spyware in 2019 purchased and tested Pegasus spyware.⁸ At the time, Pegasus was not capable of hacking smartphones with U.S. phone numbers. But NSO later developed a new system called Phantom, which is capable of hacking U.S. phones.⁹ The January 2022 article discusses the demonstration that FBI received about NSO's Phantom product.¹⁰ A true and correct copy of that article is attached hereto as Exhibit A.

8. Amid widespread negative coverage of the abuses of NSO products elsewhere, the FBI secretly terminated its relationship with NSO in July of 2021. This is also reflected in an email chain produced to me in this litigation by the FBI. A true and correct copy of that email, dated July 22, 2021, and labeled Bates 516, is attached hereto as Exhibit D.

⁷ "Israeli Company's Spyware Is Used to Target U.S. Embassy Employees in Africa," *The New York Times*, Dec. 3, 2021, <https://www.nytimes.com/2021/12/03/us/politics/phone-hack-nso-group-israel-uganda.html>.

⁸ "The Battle for the World's Most Powerful Cyberweapon," *The New York Times Magazine*, Jan. 28, 2022, <https://www.nytimes.com/2022/01/28/magazine/nso-group-israel-spyware.html>.

⁹ *Id.*

¹⁰ *Id.*

9. In March 2022, FBI Director Christopher Wray publicly confirmed at a congressional hearing that the FBI had purchased a license to test NSO spyware, but he maintained that the agency decided not to operationalize the technology.¹¹

10. In a story published in May 2022, *The Times* revealed that the FBI had told the Israeli government at the time it was seeking to obtain NSO tools that it wanted to use the technology in criminal investigations. A true and correct copy of that story is attached as Exhibit B.

The Times's FOIA Requests

11. I submitted a FOIA request to the FBI on January 10, 2022, seeking all contracts, memoranda of understanding and correspondence between the FBI and employees of NSO Group, an Israeli technology firm.

12. The FBI acknowledged my request on January 13, 2022, and assigned it a request number, but denied my request for expedited processing.

13. I attempted to communicate with the FBI about this request, but by February 24, 2022, I still had not received any response. On that date, I filed this lawsuit along with my employer, The New York Times Company. (Dkt. 1.)

14. I submitted another FOIA request to the FBI on February 7, 2022, seeking (i) “All policies, reports, memoranda, or guidelines regarding the use of NSO products. . . . and (ii) All correspondence within the Department of Justice, including the FBI, discussing the use of NSO products.”

¹¹ “Hearing on Annual Worldwide Threats,” U.S. House of Representatives, March 8, 2022 <https://docs.house.gov/meetings/IG/IG00/20220308/114469/HHRG-117-IG00-Transcript-20220308.pdf>.

15. On February 14, 2022, the FBI denied my second request, explaining that it could “neither confirm nor deny the existence of records responsive to [the] request pursuant to FOIA Exemption (b)(7)(E)”—*i.e.*, a *Glomar* response. I appealed the denial of this request on February 22, 2022.

16. On March 23, 2022, *The Times* and I filed an Amended Complaint that included my second request. (Dkt. 9).

The FBI’s Public Statements About NSO

17. In March 2022, as noted, FBI Director Christopher Wray testified about NSO at a congressional hearing.¹² When asked about the FBI’s purchase of Pegasus and the agency’s evaluation of it under the name Phantom, he confirmed that the FBI “bought a limited license for testing and evaluation,” but primarily to assess “the security concerns raised by [NSO] products.” Director Wray maintained that the FBI “has not and did not use the NSO products operationally in any investigation.”

The Government’s Search and Document Production

18. In reviewing the Government’s production, I noticed that it did not include certain documents that are known to exist.

19. One example is correspondence involving Senator Ron Wyden. On April 5, 2022, Senator Ron Wyden’s office sent an inquiry to the FBI about NSO. The FBI responded on June 6, 2022. A true and correct copy of the FBI’s response to Sen. Wyden’s office is attached as Exhibit C.

¹² *Id.*

20. However, neither the FBI's document production nor its *Vaughn* index included these letters, although the FBI's *Vaughn* index referenced documents discussing how to respond to Senator Wyden's inquiry.

21. I understand from the Government's declaration that in its collection of responsive documents it used only two search terms, "NSO Group" and "Pegasus," (Seidel Decl. ¶ 28), and that it did not use the search term "Phantom."

I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct. Dated this 3rd day of October, 2022.



Mark Mazzetti